shareholder was in the first instance unauthorized, that it was without his knowledge or consent, and that he has not since acquiesced in or ratified it.

The test of liability, therefore, seems to be the fact of being a record shareholder, knowledge of that fact, and some act in approval or ratification.

M. H. V. G.

FIXTURES: OWNERSHIP OF AS BETWEEN VENDOR AND VENDEE IN POSSESSION: RIGHT OF RE-LOCATOR OF MINING CLAIM TO EXISTING IMPROVEMENTS.—Two recent California decisions are worthy of comment because of their bearing on what has been a rather confused subject in the law of this state. In the case of *Chowchilla Colonization Co. et al v. Thompson et al*,[1] it was held that a vendee in possession under a contract to buy land had no right to remove the buildings he had erected. There was a special provision in the contract of sale to the effect that all improvements on the land were to belong to the vendor in the event the vendee failed to fulfill his obligations, and the latter made no attempt to remove the buildings until after defaulting in several payments.

The following general rule was quoted by the court: "Articles annexed or structures erected by a vendee of land who is in possession by virtue of his contract of purchase, but who has not yet obtained title to the premises, cannot be removed by him without the consent of the vendor, the presumption being, from his interest under his contract and expectation of acquiring absolute title, that he intended the articlees or structures to become part of the land."[2] This generalization applies very well to cases in which the vendee has defaulted and lost all equitable interest in the land,[3] but if carried to its full extent leads to inequitable results. The California Supreme Court recognized this limitation, and in the case of Miller v. Waddingham[4] held that under the principle of equitable conversion a vendee not in default was equitable owner, and as such at liberty to remove fixtures so long as he did not impair the vendor's security. The Court pointed out that such a rule operates between a mortgagor and a mortgagee, the latter being entitled to enjoin waste only when he shows that his security is endangered.

Another point not always kept in mind is that the general-

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[1] (Feb. 8, 1919) 28 Cal. App. Dec. 207, 179 Pac. 411.

[2] 13 Am. & Eng. Encyc. Law (2d Ed.) 672. This general rule is widely followed. See Moore v. Vallentine (1877) 77 N. C. 188, 6 Morr. Minn Rep. 112.

[3] Cook v. Enright (1901) 134 Cal. 1, 66 Pac. 3, 2 Morr. Min. Rep. 496; Moore v. Vallentine, supra, n. 2.

[4] (1891) 91 Cal. 377, 27 Pac. 750, 13 L. R. A. 680. This opinion was given on a rehearing. See the case as originally decided, 25 Pac. 688. The court in the first hearing of the case refused to accept the equitable doctrine upon which the decision was finally rested.

ization above quoted does not apply as between landlord and tenant, and as between the parties to a license. The situation created by an option contract is also peculiar. The court that decided Miller v. Waddingham,[5] the same judge writing both opinions, held in the case of Pomeroy v. Bell[6] that one in possession under an option contract to buy could not remove fixtures before the expiration of the option period. Miller v. Waddingham was not referred to in any way, the court apparently viewing the situation entirely from the standpoint of law as distinguished from the equitable analysis in the Waddingham case. The established rule is that the party in possession under an option has no equitable estate until he exercises his option.[7] Yet the court held that the option holder had an interest of some sort in the land. At common law he would probably be classed as a tenant.[8] This case appears very questionable, therefore, although cited by the Supreme Court in a recent decision,[9] for if the party in possession was in the position of a vendee he should have been permitted to remove the fixtures under the rule of the Waddingham case. He might also have had the right of removal if a tenant.[10]

Another limitation on the general principle of the right to fixtures as between vendor and vendee has been recognized where the vendor defaults in an oral contract. In such cases the vendee in possession has been protected.[11]

The principal case seems sound. There the vendee was not only in default but had also expressly agreed, as part of the consideration, to lay no claim to any improvements in case of default. He had, therefore, lost any equitable interest that he had while upholding his part of the agreement.

In the case of *Watterson v. Cruse*,[12] the Supreme Court of California held that the re-locator of a mining claim is entitled to all fixtures attached to the land at the time of the re-location. This appears to be the first decision on this point by a court of last resort. The leading text-writer[13] on mining law had formulated a rule to that effect, however, and was quoted by the court in support of its holding. There were numerous analogous decisions holding that wherever a claimant attaches fixtures to public land that he forfeits his right to remove them, and that

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[5] Supra, n. 4.
[6] (1897) 118 Cal. 635, 50 Pac. 683.
[7] Townley v. Bedwell (1808) 14 Ves. 591, 33 Eng. Rep. R. 648.
[8] Doe d. Tomes v. Chamberlaine (1839) 5 M. & W. 14, 151 Eng. Rep. 7.
[9] Watterson v. Cruse (Dec. 7, 1918) 56 Cal. Dec. 525, 176 Pac. 780.
[10] Hayes v. New York Gold Mining Co. (1874) 2 Colo. 273; 2 Ann. Cas. 738, n.
[11] Waters v. Reuben (1884) 16 Nebr. 99, 19 N. W. 687, 49 Am. Rep. 710.
[12] Supra, n. 9.
[13] Lindley on Mines (3d. ed.) § 409.

a subsequent claimant who gets title to the land from the government gets all fixtures thereon.[14] Some cases do, however, allow removal before the claimant abandons his rights.[15]

That the equitable doctrine of Miller v. Waddingham has any application to fixtures on public lands appears doubtful. While the claimant has a possessory title which will be protected against all third parties so long as he performs his obligations, yet Miller v. Waddingham would not apply unless it were held that equitable conversion operates against the government. In the principal case the former locator had forfeited all rights before he attempted a removal, so the question of what his rights would have been before default did not require determination.

D. J. W.

PROPERTY: TERMINATION OF A TRUST: MEANING OF GIFT OVER TO "CHILDREN": ARE ADOPTED CHILDREN INCLUDED?—The decision in the case of *Fletcher v. Los Angeles Trust & Savings Bank*[1] is questionable. In this case, by the will of the testator, a trust fund was created and placed in the hands of a trustee who was to pay the net income therefrom to the testator's daughter, Annie K. Fletcher, "so long as she shall live" and "upon her death", the said fund with all accumulations therefrom, if any, were to be given to the "children of said Annie K. Fletcher to be equally divided among them by the said trustee share and share alike." Plaintiffs Mrs. A. K. Fletcher, the holder of the life estate, and her only child, Kimball Fletcher, brought this action to terminate the trust and to compel the trustee to pay over, assign and convey the trust fund to them. The judgment for plaintiffs was affirmed on appeal.

At the time of the trial of the action, Mrs. Fletcher was fifty-five years of age. Facts were established by the evidence in the case which negatived the possibility of birth of other children by her. Upon this evidence the court held that the remainder to Kimball Fletcher was vested. Two questions arise from this holding: (1) Was the remainder vested absolutely? (2) Should such evidence of physical impossibility be admitted to rebut the time-honored presumption of the law that there is possibility of issue until death?

A gift to a number of persons not named, but answering a general description, is a gift to them as a class. What persons constitute the class is to be ascertained when the time comes at which the gift takes effect.[2] Where the remainder is to

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[14] Hiatt v. Brooks (1885) 17 Nebr. 33, 22 N. W. 73; Collins v. Bartlett (1872) 44 Cal. 371; McKiernan v. Hesse (1877) 51 Cal. 594.

[15] McKiernan v. Hesse, supra, n. 15.

[1] (March 10, 1919) 28 Cal. App. Dec. 548.

[2] 73 Am. St. Rep. 413, note; In re Denlinger's Estate (1895) 170 Pa. St. 104, 32 Atl. 573; Cal. Civ. Code §§ 1336, 1337.